IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.43161 of 2006
M/S SIGMA LABORATORIES PVT.LTD. & ANR
Versus
STATE OF BIHAR & ANR
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4. 18.8.2008. Heard Sri N.K. Agrawal, Senior Advocate, the learned Counsel for the petitioners, Mr. Madav Prasad Yadav, the learned counsel for O.P. No.2 and Mr. Jharkhandi Upadhayay, the learned A.P.P. for the State.

Through this application, the petitioners have prayed for the quashing of the order dated 30.7.2003 , whereby Sri B.Pandey, the learned Judicial Magistrate, First Class, Patna, has taken cognizance against the petitioners alongwith six others in connection with Complaint Case No.601(C) of 2000 under Sections 406 and 420 I.P.C..

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According to the complainant who has been impleaded herein as O.P. No.2, accused nos.2 to 7, named in the complaint petition, were directly incharge of the distribution of drug and medicinal product at Patna and were directly responsible for the affair of the business of accused no.1 at Patna. It is said that accused nos.2 to 6 at the relevant time came to Patna and alongwith accused no.7 went to the firm of the complainant and persuaded him to become their permanent stockist /consignee agent for their company and thereby they would earn Rs.1 lac per month as commission but when the complainant showed his inability the accused nos.2 to 7 persuaded him to open a new firm in the name of his mother and the cost for opening the new firm would be borne by the accused persons. On

hearing this, the complainant became ready and accordingly M/s. Sharda Agency under the proprietorship of Smt. Sharda Devi was started. It is also alleged that accused nos.4 to 7 again came to the house of Sharda Devi and persuaded her to give Rs.10,00,000/- as security money for becoming C & F Agent on which the company would give interest at the rate of 15% per month over the said deposit. Accordingly, Rs.10 lacs was deposited by Smt. Sharda Devi on 16.1.1999 and 23.1.1999 in two installments whereafter the accused persons again demanded bank guarantee of Rs.5 lacs from the complainant. Since the complainant did not agree, the accused persons allegedly started coercing her with a view to grab security deposit by showing bogus and fictitious amount. It is also alleged that the accused persons have not paid a single farthing to the complainant and to grab the security money deposited by the complainant they also started interfering with her business and instructions were given to sell the medicinal products of the company in less than 25% of the actual price. The complainant claimed the differences of price from the company but the accused did not take any action in spite of several demands and dishonestly adjusted the claim of the complainant towards the dues of M/s. Jai Ma Ambey , a sister concern of the complainant. It is also alleged that the accused no.8 in conspiracy with other accused persons had committed theft in the office of the complainant of the computer floppy with a view to manipulate the amount and stocks in order to grab the security money and in that contest they also furnished false account with a claim of

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Rs.15,77,777/- against the complainant and also Rs.40 lacs towards unrealized amount from the market.

It has been submitted by the learned counsel for the petitioner that it is only a matter of accounting between the parties which is the bone of contention and for that no criminal prosecution would lie and the remedy lay in a civil suit.

It is true that the High Court in exercise of its power under Section 482 Cr.P.C.will not look into the defence of the alleged wrong doer since those are matters to be considered at the trial but what the High Court is required to do is to see as to whether on consideration of the evidence available before it in the records whether a prima facie case has been made out or not.

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In the instant case, from perusal of the complaint, it appears that the entire dispute revolves around the settlement of account and the criminal prosecution, therefore, is not maintainable.

Accordingly, the application succeeds and the impugned order taking cognizance is hereby quashed.

(Abhijit Sinha,J)

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P.S.